



COLORADO

Department of Public
Health & Environment

Dedicated to protecting and improving the health and environment of the people of Colorado

September 13, 2016

Sarah J. Baker, Registered Agent
Eagle Valley Clean Energy, LLC
316 Abrams Creek Road
Eagle, CO 81631

Certified Mail Number: 7005 1820 0000 3207 8388

RE: Service of Notice of Violation/Cease and Desist Order, Number: IO-160913-2

Dear Ms. Baker:

Eagle Valley Clean Energy, LLC is hereby served with the enclosed Notice of Violation / Cease and Desist Order (the "NOV/CDO"). The NOV/CDO is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §§25-8-602 and 25-8-605, C.R.S., of the *Colorado Water Quality Control Act*, (the "Act"). The Division bases the NOV/CDO upon findings that Eagle Valley Clean Energy, LLC has violated the Act and/or permit or control regulations promulgated pursuant to the Act, as described in the enclosed NOV/CDO.

Pursuant to §25-8-603, C.R.S., Eagle Valley Clean Energy, LLC is required, within thirty (30) calendar days of receipt of this NOV/CDO, to submit to the Division an answer admitting or denying each paragraph of the Findings of Fact and responding to the Notice of Violation.

This action could result in the imposition of civil penalties. The Division is authorized pursuant to §25-8-608, C.R.S., to impose a penalty of \$10,000 per day for each day during which such violation occurs.

Please be advised that the Division is continuing its investigation into this matter and the Division may identify supplementary violations that warrant amendments to this NOV/CDO or the issuance of additional enforcement actions.



Should you or representatives of Eagle Valley Clean Energy, LLC desire to discuss this matter informally with the Division, or if you have any questions regarding the NOV/CDO, please do not hesitate to contact Eric Mink by phone at (303) 692-2312 or by electronic mail at eric.mink@state.co.us.

Sincerely,



Eric T. Mink, Enforcement Specialist
Clean Water Enforcement Unit
WATER QUALITY CONTROL DIVISION

Enclosure(s)

cc: Enforcement File

ec: Michael Boeglin, EPA Region VIII
Ray Merry, Eagle County Public Health Agency
Aimee Konowal, Watershed Section, CDPHE
Michael Beck, Grants and Loans Unit, CDPHE
Kelly Morgan, Enforcement Unit, CDPHE
Doug Camrud, Engineering Section, CDPHE
Heather Drissel, Field Services Section, CDPHE
Erin Scott, Permits Section, CDPHE
Tania Watson, Data Management, CDPHE



COLORADO

Department of Public Health & Environment

WATER QUALITY CONTROL DIVISION

NOTICE OF VIOLATION / CEASE AND DESIST ORDER

NUMBER: IO-160913-2

IN THE MATTER OF: EAGLE VALLEY CLEAN ENERGY, LLC
CDPS PERMIT NO. C00048901
EAGLE COUNTY, COLORADO

Pursuant to the authority vested in the Colorado Department of Public Health and Environment's (the "Department") Division of Administration by §§25-1-109 and 25-8-302, C.R.S., which authority is implemented through the Department's Water Quality Control Division (the "Division"), and pursuant to §§25-8-602 and 25-8-605 C.R.S., the Division hereby makes the following Findings of Fact and issues the following Notice of Violation / Cease and Desist Order:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times relevant to the violations cited herein, Eagle Valley Clean Energy, LLC ("Eagle Valley") was a Utah limited liability company in good standing and registered to conduct business in the state of Colorado.
2. Eagle Valley is a "person" as defined under the Water Quality Control Act, §25-8-103(13), C.R.S. and its implementing permit regulation, 5 CCR 1002-61, §61.2(73).
3. Eagle Valley owns and/or operates an electrical generation facility, located at 39.648, -106.943, on the north side of the Town of Gypsum, in Eagle County, Colorado, (the "Facility").
4. The Facility generates energy by combusting wood biomass to create heat, which is used to produce steam to turn a turbine-generator and produce electricity. At the Facility, raw water is filtered, treated with chemicals to prevent scale, corrosion, and microbiological growth. The treated water is then fed through a reverse osmosis ("RO") system and directed to the boiler. Boiler blowdown is directed to the cooling towers and treated with chemicals and recirculated in the cooling system. Cooling water blowdown, RO concentrate, and filter backwash is discharged through Outfall 001A. The Facility does not provide any treatment of these waste streams prior to discharge.
5. The Facility is the subject of the Colorado Discharge Permit System, Permit No. C00048901 (the "Permit"). The Permit became effective on November 1, 2013 and is set to expire on October 31, 2018.



6. The Permit authorizes Eagle Valley to discharge cooling water blowdown and RO concentrate from the Facility through Outfall 001A into the Eagle River.
7. Pursuant to 5 CCR 1002-61, §61.8, Eagle Valley must comply with all the terms and conditions of the Permit, and violations of such terms and conditions as specified in the Permit may make Eagle Valley subject to civil and criminal liability pursuant to §§25-8-601 through 25-8-612, C.R.S.

Failure to Properly Monitor and Report

8. Pursuant to Part I.A.2. of the Permit, in order to obtain an indication of probable compliance or noncompliance with the specified effluent limitations, Eagle Valley shall monitor all effluent parameters at specified frequencies. Such monitoring is required for the life of the Permit unless otherwise specified. The results of such monitoring shall be reported on the DMR form. Note, DMRs labeled "Outfall 001Q" represent the data for quarterly parameters monitored at Outfall 001A and DMRs labeled "Outfall 001W" represent the data for quarterly Whole Effluent Toxicity ("WET") tests taken at Outfall 001A.
9. Pursuant to Part I.D.1. of the Permit, Eagle Valley is required to report all monitoring results using Division approved DMRs or by using the Division's Net-DMR service. Eagle Valley is required to ensure the DMRs are mailed to the Division so that they are received no later than the 28th day of the month following the monitoring period (monthly). If no discharge occurs during the monitoring period, "No Discharge" shall be reported. Additionally, the Permit specifies that the DMR forms shall be filled out accurately and completely in accordance with the requirements of the Permit and the instructions on the forms.
10. Division records establish that Eagle Valley failed to submit DMRs to the Division for Outfalls 001A for the following reporting periods:

EAGLE VALLEY DELINQUENT DMRs	
REPORTING PERIOD	OUTFALL/ MONITORING LOCATION NUMBER
May 1-31, 2015	001A
April 1 - June 30, 2015	001Q (001A Quarterly), 001W (001A WET)
June 1-30, 2015	001A
July 1-31, 2015	001A
August 1-31, 2015	001A
July 1 - September 30, 2015	001Q (001A Quarterly), 001W (001A WET)
September 1-30, 2015	001A
October 1-31, 2015	001A
November 1-30, 2015	001A
August 1 - December 31, 2015	001Q (001A Quarterly), 001W (001A WET)
December 1-31, 2015	001A
January 1-31, 2016	001A
February 1-29, 2016	001A
January 1 - March 31, 2016	001Q (001A Quarterly), 001W (001A WET)
March 1-31, 2016	001A
April 1-30, 2016	001A
May 1-31, 2016	001A
April 1 - June 30, 2016	001Q (001A Quarterly), 001W (001A WET)
June 1-30, 2016	001A

11. Division records establish that Eagle River failed to submit DMRs to the Division by the 28th day of the month following the end of the reporting periods identified in the table below:

EAGLE VALLEY LATE DMRs			
REPORTING PERIOD	OUTFALL/ MONITORING LOCATION NUMBER	DMR DUE DATE	DMR RECEIPT DATE
November 1-30, 2013	001A	12/28/2013	4/1/2014
December 1-31, 2013	001A	1/28/2014	4/1/2014
January 1-31, 2014	001A	2/28/2014	4/1/2014
February 1-28, 2014	001A	3/28/2014	4/1/2014

12. Eagle Valley's failure to monitor all effluent parameters and/or submit DMRs to the Division so that they are received by no later than the 28th day of the month following the monitoring period, as identified above in paragraphs 10-11 above, constitutes violations of Parts I.A.2. and/or I.D.1. of the Permit.

NOTICE OF VIOLATION

13. Based on the foregoing Findings of Fact and Conclusions of Law, you are hereby notified that the Division has determined that Eagle Valley has violated the following sections of the Permit.

Part I.A.2. of the Permit which states in part: "In order to obtain an indication of the probable compliance or noncompliance with the effluent limitations specified in Part I.A., the permittee shall monitor all effluent parameters at the following frequencies. The results of such monitoring shall be reported on the Discharge Monitoring Report form..."

Part I.D.1. of the Permit which states in part: "Reporting of the data gathered in compliance with Part I.A. or Part I.B. shall be on a monthly basis. Reporting of all data gathered shall comply with the requirements of Part I.D. (General Requirements). Monitoring results shall be summarized for each calendar month and reported on Division approved discharge monitoring report (DMR) forms (EPA forms 3320-1). The permittee must submit these forms either by mail, or by using the Division's Net-DMR services (when available). If mailed, one form shall be mailed to the Division... so that the DMR is received no later than the 28th day of the following month... If no discharge occurs during the reporting period, "No Discharge" shall be reported. The DMR forms shall be filled out accurately and completely in accordance with the requirements of this permit and the instructions on the forms..."

REQUIRED CORRECTIVE ACTION

Based upon the foregoing factual and legal determinations and pursuant to §25-8-602 and §25-8-605, C.R.S., Eagle Valley is hereby ordered to:

14. Cease and desist from all violations of the Colorado Water Quality Control Act, §§25-8-101 through 25-8-803, C.R.S., its implementing regulations promulgated thereto and the Permit.

Furthermore, the Division hereby orders Eagle Valley to comply with the following specific terms and conditions of this Order:

15. Eagle Valley shall immediately initiate measures to ensure complete DMRs are submitted to the Division pursuant to the terms and conditions of the Permit. Within thirty (30) calendar days of receipt of this Order, Eagle Valley shall submit a written plan and certification to the Division outlining Eagle Valley's actions to ensure that DMRs are submitted to the Division accurately and completely by no later than the 28th day of the month following the end of a reporting period.
16. Within thirty (30) calendar days of receipt of this Order, Eagle Valley shall submit a certification stating that the Facility can consistently produce effluent in compliance with the numeric limitations outlined in the Permit. If no such certification can be submitted, Eagle Valley shall submit specific short-term and long-term measures that will be taken by Eagle Valley to rectify any identified deficiencies so that the Facility can consistently produce effluent in compliance with the numeric limitations outlined in the Permit. For each short-term and long-term measure identified, Eagle Valley shall also submit a time schedule for completion of each measure. The measures and time schedule submitted shall become a condition of this Order, and Eagle Valley shall implement the measures and time schedule as submitted unless notified by the Division, in writing, that alternate measures and/or time schedules are appropriate. If the Division imposes alternate measures and/or time schedules, they shall also become a condition of this Order.
17. If Eagle Valley becomes aware of any situation or circumstances that cause Eagle Valley to become unable to comply with any condition or time schedules set forth by this Order, Eagle Valley shall provide written notice to the Division within five (5) calendar days of Eagle Valley becoming aware of such circumstances. Eagle Valley's notice shall describe what, if any, impacts will occur on Eagle Valley's ability to comply with the Colorado Water Quality Control Act and any impacts on the remaining conditions and/or time schedules specified by this Order, and what steps are being taken to mitigate the impacts.
18. All documents submitted under this Order shall use the same titles as stated in this Order, and shall reference both the number of this Order and the number of the paragraph pursuant to which the document is required. Within thirty (30) calendar days of receiving Division comments on submitted documents, Eagle Valley shall revise the submitted document(s) to properly address the Division's comments and resubmit the document(s) for Division review.

NOTICES AND SUBMITTALS

For all documents, plans, records, reports and replies required to be submitted by this Notice of Violation/Cease and Desist Order, Eagle Valley shall submit an original and an electronic copy to the Division at the following address:

Eric Mink
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CWE-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530
Telephone: (303) 692-2312
Email: eric.mink@state.co.us

For any person submitting documents, plans, records and reports pursuant to this Notice of Violation / Cease and Desist Order, that person shall make the following certification with each submittal:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

OBLIGATION TO ANSWER AND REQUEST FOR HEARING

Pursuant to §25-8-603, C.R.S. and 5 CCR 1002, §21.11 you are required to submit to the Division an answer affirming or denying each paragraph of the Findings of Fact and responding to the Notice of Violation. The answer shall be filed no later than thirty (30) calendar days after receipt of this action.

Section 25-8-603, C.R.S. and 5 CCR 1002, §21.11 also provide that the recipient of a Notice of Violation may request the Division to conduct a public hearing to determine the validity of the Notice, including the Findings of Fact. Such request shall be filed in writing with the Division and include the information specified in 5 CCR 1002, §21.4(B)(2). Absent a request for hearing, the validity of the factual allegations and the Notice of Violation shall be deemed established in any subsequent Department proceeding. The request for hearing, if any, shall be filed no later than thirty (30) calendar days after issuance of this action. The filing of an answer does not constitute a request for hearing.

FALSIFICATION AND TAMPERING

Be advised, in accord with §25-8-610, C.R.S., that any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Colorado Water Quality Control Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment.

POTENTIAL CIVIL AND CRIMINAL PENALTIES

You are also advised that any person who violates any provision of the Colorado Water Quality Control Act (the "Act"), §§25-8-101 to 803, C.R.S., or of any permit issued under the Act, or any control regulation promulgated pursuant to the Act, or any final cease and desist order or clean-up order issued by the Division shall be subject to a civil penalty of not more than ten thousand dollars per day for each day during which such violation occurs. Further, any person who recklessly, knowingly, intentionally, or with criminal negligence discharges any pollutant into any state waters commits criminal pollution if such discharge is made without a permit, if a permit is required by the Act for such discharge, or if such discharge is made in violation of any permit issued under the Act or in violation of any Cease and Desist Order or Clean-up Order issued by the Division. By virtue of issuing

this Notice of Violation / Cease and Desist Order, the State has not waived its right to bring an action for penalties under §§25-8-608 and 609, C.R.S., and may bring such action in the future.

RELEASE OR DISCHARGE NOTIFICATION

Pursuant to §25-8-601, C.R.S., you are further advised that any person engaged in any operation or activity which results in a spill or discharge of oil or other substance which may cause pollution of the waters of the state, shall notify the Division of the discharge. If said person fails to so notify, said person is guilty of a misdemeanor, and may be fined or imprisoned or both.

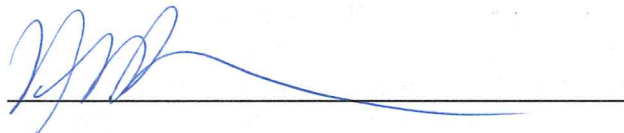
EFFECT OF ORDER

Nothing herein contained, particularly those portions requiring certain acts to be performed within a certain time, shall be construed as a permit or license, either to violate any provisions of the public health laws and regulations promulgated thereunder, or to make any discharge into state waters. Nothing herein contained shall be construed to preclude other individuals, cities, towns, counties, or duly constituted political subdivisions of the state from the exercise of their respective rights to suppress nuisances or to preclude any other lawful actions by such entities or the State.

For further clarification of your rights and obligations under this Notice of Violation / Cease and Desist Order you are advised to consult the Colorado Water Quality Control Act, §§25-8-101 to 803, C.R.S., and regulations promulgated thereunder, 5 CCR 1002.

Issued at Denver, Colorado, this 13th day of September 2016.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Nicole Rowan, P.E.
Clean Water Program Manager
WATER QUALITY CONTROL DIVISION